IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.300 OF 2006
WITH
CIVIL APPLICATION NO.385 OF 2006

Priyadarshani Constructions
Builders & Developers ..Appellants.

V/s.

Smt.Lilabai Hira Bhoir
alias Lilabai Suresh Patil & ors. ..Respondents.

Mr.S.A.Sawant for appellant.

Mr.S.D.Patil for respondent No.1.

Mr.G.S.Hegde for respondent No.2 and 3.

CORAM: A.M.KHANWILKAR,J

DATE : JUNE 30, 2006.

P.C. :

1. Hear counsel for the parties.

2. Admit.

3. Mr.Patil waives notice for the respondent No.1. Mr.Hegde waives notice for respondent Nos. 2 and 3. As short question is involved, appeal is taken up for hearing for final disposal forthwith by consent.

4. This appeal from order takes exception to the

interlocutory order passed by the Trial Court dated March 29, 2006 below Exh. 5 in Special Civil Suit No.151 of 2005. For the nature of order that I propose to pass, it is not necessary to advert to the factual matrix of the case in detail. Suffice it to observe that the lower court has rejected the prayer for interim relief during the pendency of the suit as prayed by the appellant on the sole reasoning that the agreement in question was executed between the parties, at that relevant time the property was not in existence the same was not allotted to the respondent No.1/private defendant. In such a case, no relief of specific performance can be granted. While taking this view, however, the trial Court has recorded as of fact that after execution of the agreement in question, the authority has allotted the plot to the respondent No.1 and has put him in possession thereof. Relying on this finding and the legal position stated in the unreported decision of this court dated 13th April, 2006 in **A.O. No.207 of 2006** in the case of **Javed Abdul Rahman Patel V.s. Smt.Mariambibi Ismail Patel & Anr.**, Counsel for the appellant submits that the opinion recorded by the lower court cannot be countenanced in law. This is so because, it is well settled that even if there is contingent contract between the parties, it is open

to the parties to such contract to approach the Court of law for appropriate reliefs, as may be available. In the circumstances, the sole reason, which is recorded by the Court below cannot be sustained. Accordingly, this appeal succeeds.

5. The impugned order is required to be set aside and parties are relegated before the trial Court since the application for interim injunction preferred by the appellant will have to be considered on its own merits in accordance with the law.

6. The Trial Court shall do so after giving opportunity to the respondent No.1 to file his say to oppose the interim application. All questions on merit of the said contentions are kept open to be decided in accordance with the law.

7. Appeal allowed on the above terms with no order as to costs.

8. Parties shall appear before the trial court on 20th July, 2006 at 11 a.m. on which date the trial Court may assign the date of hearing of the application at Exh. 5, which is restored to its file by virtue of this order.

9. Till the stay application is finally disposed of order of status quo as is granted by this court shall continue or till modified by the trial Court, if situation so warrants.

10. In view of this order, Appeal as well as Civil application disposed of accordingly.